LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 28 1967
JOHN F. DAVIS, CLERK

No. 551

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

STATE OF TEXAS,

Petitioner

v.

CENTRAL POWER AND LIGHT COMPANY,

Respondent

H. K. HOWARD
PHILLIP MCCONNELL

Attorneys for Respondent
120 N. Chaparral St.
Corpus Christi, Texas
78403

INDEX

	Page
RESTATEMENT OF QUESTION PRESENTED	1
RESTATEMENT OF THE CASE	2
ARGUMENT AND AUTHORITIES	3
CONCLUSION	9
CERTIFICATE OF SERVICE	9

AUTHORITIES

Central Power and Light Company v. State of Texas; 410 S.W. 2nd. 18, (Tex. Civ. App., 1966, Ref. N.R.E.)	3
Texas v. New Jersey et al, 379 U.S. 674, 85 S.Ct. 626, 13 L.Ed. 2nd. 596 (1965)	2, 3, 4, 5, 8, 9

STATUTES

General Statutes of Connecticut, Sec. 3-56a et seq.	6
General Laws of Rhode Island, Sec. 33-20-1 et seq.	6, 7
New Jersey Statutes, Sec. 2A: 37-1 et seq.	7
General Statutes of Arkansas, Sec. 50-601 et seq.	7
84 Oklahoma Statutes, Sec. 271 et seq.	7
Illinois Revised Statutes, Chap. 141, Sec. 101 et seq.	7
California Code of Civil Procedure, Chap. 7, Sec. 1501 et seq.	7, 8
Arizona Revised Statutes, Chap. 3.1, Sec. 44-351 et seq.	8
Kentucky Revised Statutes, Chap. 393, Sec. 393.010 et seq.	8

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No._____

STATE OF TEXAS,

Petitioner

v.

CENTRAL POWER AND LIGHT COMPANY,

Respondent

—o—

RESPONDENT'S REPLY BRIEF TO THE PETITION OF THE STATE OF TEXAS FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

The Respondent, Central Power and Light Company, a corporation organized and existing under and by virtue of the laws of the State of Texas, files this its Reply Brief to the Petition of the State of Texas for Writ of Certiorari to the Court of Civil Appeals for the Thirteenth Supreme Judicial District of Texas, and would herein show the Court that the judgment of the Court of Civil Appeals for the Thirteenth Supreme Judicial District of Texas is in all things correct and that Petitioner's Application for Writ of Certiorari should be denied.

RESTATEMENT OF QUESTION PRESENTED

The Respondent is a public utility corporation organized and existing under the laws of the State of Texas and does no business outside of the boundaries of

the State of Texas. The Respondent corporation owes a total of $462.06 in unclaimed dividend payments to certain record owners of its stock whose last known addresses, according to Respondent's books and records, are in states other than the State of Texas. The Respondent corporation does not hold unclaimed dividends payable or trust funds created for the purpose of discharging dividend indebtedness. The Respondent corporation merely owns general assets in the State of Texas out of which assets claims against it, such as dividend indebtednesses, may be satisfied. In view of these facts, the question to be decided by this Court is:

May Petitioner, under its escheat laws, cause Respondent to pay over to the Treasurer of the State of Texas a portion of its general assets regardless of the fact that this Court's decision in *Texas vs. New Jersey*, 379 U.S. 674, 85 S.Ct. 626, 13 L.Ed. 2d 596 (1965), states that the situs of the property subject to escheat is in a state other than the State of Texas.

RESTATEMENT OF THE CASE

Over a period of a number of years, Respondent has been unable to tender payment of dividends on its preferred stock to some of its preferred shareholders for the reason that their whereabouts are unknown. Some of these creditors' addresses, as shown by Respondent's books and records, are in states other than the State of Texas. Petitioner has sought to escheat an amount of Respondent's general assets equal to the amount of dividend payments owed by Respondent to these various preferred stockholders whose last known addresses are outside of the State of Texas. Respondent successfully defended against Petitioner's action in both the Texas Court of Civil Appeals and the Texas Supreme Court. The escheat laws of these states of last known address were before both of these Texas appellate courts, and were construed to effectively escheat the property involved. Respondent's defense was based upon this Court's holding in *Texas vs. New Jersey*, supra, that it was the intangible personal property, the debt, claim, or chose in action, which is es-

cheatable, and that the situs of that intangible personal property is in the state of last known address of the creditor according to debtor's books and records. The case as finally reported below and upon which this Petition for Writ of Certiorari is predicated is *Central Power and Light Company vs. State of Texas*, 410 S.W. 2d 18 (Tex. Civ. App., 1966, Ref., N.R.E.)

ARGUMENT AND AUTHORITIES

Petitioner's Application for Writ of Certiorari presents a question which was answered by a decision of this Court within the last three years. In *Texas vs. New Jersey et al*, 379 U.S. 674, 85 S.Ct. 626, 13 L.Ed. 2d 596; final decree in 380 U.S. 518, 85 S.Ct. 1136, 14 L.Ed. 2d 49, Petitioner advanced the identical arguments and this Court held:

1. That intangible personal property, such as debts, unclaimed dividends payable or undelivered stock certificates resulting from stock dividends (See Footnote 4 [2] [a] at page 675 of 379 U.S.) is an asset of the creditor.

2. That under the concept of "mobilia sequuntur personam", the asset has its situs in the state of last known address of the creditor as shown by the debtor's books and records.

3. That if such state of last known address has an applicable escheat law, then that state alone is entitled to escheat the asset.

Respondent is indebted to certain of its stockholders of record for dividends due them which have remained unclaimed for a period of more than seven years. The last known addresses of these creditors are in states other than Texas. The total amount of these unclaimed dividends is $462.06.

The concept announced in Texas vs. New Jersey et al, supra, as applied to the instant case is simply, but adequately, stated as follows:

1. Creditors of Respondent hold debts, obligations

or choses in action against Respondent. These items are assets of the creditors.

2. Under the concept of "mobilia sequuntur personam," the situses of these assets are in the states of last known addresses of the creditors, as reflected in Respondent's books and records.

3. The states of last known address are entitled to escheat these assets, providing such states have applicable escheat laws.

This Court, in *Texas vs. New Jersey et al*, continually stresses the fact that it is the intangible personal property, the debt or chose in action, itself, which is subject to escheat; not a collected debt or assets of a debtor which may be available to satisfy the obligation. In fact, this Court, at page 680 of 379 U.S., states, " . . . . These debts owed by Sun are not property to it, but rather the liability, and it would be strange to convert a liability into an asset when the State decides to escheat." Further, in adopting the rule advanced by Florida, this Court said, at pages 680-681 of 379 U.S., " . . . . That since a debt is property of the creditor, not of the debtor, fairness among the states requires that the right and power to escheat the debt should be accorded to the state of the creditor's last known address as shown by the debtor's books and records."

In view of the clear and unequivocal language of the Court, it is not open to question that the property subject to escheat is the debt or chose in action itself, not funds available from debtor's general assets. Petitioner failed to recognize this distinction and argues that it is entitled to escheat from the general assets of Respondent because it has exclusive personal jurisdiction over Respondent and its assets, and that none of the states of the creditors' last known addresses have such jurisdiction. The obvious answer to Petitioner is that the decision in *Texas vs. New Jersey et al*, supra, does not concern itself, in the least, with which state has jurisdiction over the debtor. The whole thrust of *Texas vs. New Jersey et al* is directed toward juris-

diction over the debt or chose in action, which is the asset to be escheated. Jurisdiction over the debtor is immaterial. *Texas vs. New Jersey et al* cannot be intelligently interpreted otherwise.

That this Court has recently passed on this identical question is pointedly revealed by calling the Court's attention to a motion of Petitioner in *Texas vs. New Jersey et al* to modify and clarify that opinion. This motion is on file with this Court and is part of the record in that case. Said motion was denied on June 1, 1965, by a Memorandum Opinion reported in 381 U.S. 931, 85 S.Ct. 1762, 14 L.Ed. 2d 698.

In substance, that motion asked this Court to limit the application of *Texas vs. New Jersey* to instances in which the state of last known address has personal jurisdiction over the debtor. In support of its motion, Petitioner urged that "Numerous corporations chartered under Texas laws are presently contending that the opinion of the Court in this case prevents the State of Texas from escheating funds held or owed by them to persons whose last known addresses are outside Texas regardless of the fact that such corporations neither do business nor are authorized to do business in the state of last known address."

The argument now advanced by Petitioner is the identical argument, part and parcel, that was submitted to this Court in *Texas vs. New Jersey*. Respondent submits that *Texas vs. New Jersey* adequately answers this issue and controls the instant case.

The only legitimate issue raised by Petitioner's Application for Writ of Certiorari is: Whether or not the laws of the states of last known address provide for the escheat of the subject intangible personal property having its situs in those states.

According to Respondent's books and records, the last known addresses of the out-of-state creditors owning claims against Respondent are in Arizona, California, Connecticut, Kentucky, Oklahoma, Illinois, New

Jersey, Arkansas and Rhode Island. Petitioner has quoted excerpts of the escheat laws of these states in Appendix C of its Petition, and argues that under the quoted provisions, those states cannot escheat the intangible personal property located in those states. Respondent agrees. However, Respondent would show the Court that other provisions of the same statutes, not included in Petitioner's Application for Writ of Certiorari, will effectively escheat such property.

Connecticut's escheat statutes are found in the General Statutes of Connecticut, Sec. 3-56a et seq. Sec. 3-56a includes the definition of property, to wit, "Property means realty or personalty, tangible or intangible." A debt or chose in action owned by a creditor within Connecticut is certainly intangible, personal property falling within the scope of this section. Sec. 3-54a states that property held in Connecticut and remaining unclaimed for more than seven years is presumed abandoned. Sec. 3-72a provides the procedures whereby the State of Connecticut finally escheats such abandoned property. Contrary to Petitioner's argument, Sec. 3-59a pertains only to businesses organized under Connecticut's laws or authorized to do business in Connecticut, neither of which affects Respondent. Sec. 3-59a applies to funds or general assets of of these Connecticut business entities, whereas, in the instant case, we are not concerned with funds located in Connecticut, but intangible personal property in the form of a debt or chose in action which is located in Connecticut and is subject to being escheated by that state.

Rhode Island's escheat laws are found in the General Laws of Rhode Island, Sec. 33-20-1 et seq. Sec. 33-21-11 defines personal property as "choses in action . . . and every other kind of tangible or intangible personal property". Sec. 33-21-13 states, "Whenever the whereabouts of the owner . . . . or person entitled to any property within this state has been or shall remain unknown for seven years . . . such personal property shall escheat to the state . . . ". Obviously, Rhode Island's laws will effectively escheat intangible, personal

property, such as a chose in action, which has its situs in the State of Rhode Island.

New Jersey's escheat statutes are found in Title 2A, New Jersey Statutes, Sec. 2A: 37-1 et seq. Section 2A: 37-11 defines personal property as choses in action, interest, debts, . . . stocks, bonds, . . . and every other kind of tangible and intangible personal property . . .". Section 2A: 37-13 states that personal property within the State of New Jersey which has remained unclaimed for fourteen years will escheat to the state.

Arkansas's escheat laws are found in the General Statutes of Arkansas, Sec. 50-601 et seq. Section 50-603 defines personal property as all tangible and intangible property. Section 50-604 provides that all personal property located in Arkansas and unclaimed for seven years is abandoned and is subject to escheat.

The pertinent Oklahoma statutes appear in 84 Oklahoma Statutes, Sec. 271 et seq. Section 271 provides that if the owner of any personal property is absent or unknown for seven years, then the property will be escheated to and vest in the state.

Illinois's escheat laws appear in Illinois Revised Statutes, Chapter 131, Sec. 101 et seq. Section 109 states that property not otherwise covered by the Act, including all intangible, personal property which is held in Illinois and unclaimed for 15 years is presumed abandoned. All other sections deal only with property owed by debtors organized under the laws of Illinois or who are authorized to do business in Illinois; hence, Section 109 is the section applicable to the type of personal property involved in the instant case.

California. California's escheat laws appear in the California Code of Civil Procedure, Chapter 7, Sec. 1500 et seq. Section 1508 provides that all intangible, personal property, except classes of property mentioned in Sec. 1502 through 1507, held in California and unclaimed are presumed to be abandoned. Sections 1502 through 1507 are concerned with funds or other per-

sonal property which are held by business entities either organized under the laws of California or authorized to do business in that state. Respondent does no business in California; hence, the personal property involved herein is included in Sec. 1508.

Arizona's escheat laws are found in the Arizona Revised Statutes, Chapter 3.1, Sec. 44-351 et seq. Section 44-359 provides that all personal property, tangible or intangible, not otherwise covered, held in Arizona and unclaimed for seven years is abandoned. The intangible personal property involved herein is not covered by any other provision of the Arizona Escheat Law; hence, is included within Sec. 44-359.

Kentucky's escheat laws are found in the Kentucky Revised Statutes, Chapter 393, Sec. 393.010 et seq. Section 393.050 provides that all property owned by persons unknown or absent for seven years shall escheat. This includes intangible personal property such as a debt or chose in action owned by a citizen of Kentucky. Section 393.064 is not applicable because it deals only with property held or owing by a business entity organized in Kentucky or authorized to do business in that state.

Quite predictably, there are no published cases construing any of the statutes under consideration. It is noteworthy, however, to point out that both the Texas Court of Civil Appeals and the Texas Supreme Court construed these statutes in the manner advocated by Respondent. Further, Respondent would be reluctant to believe that the Attorneys General of these nine states would agree with Petitioners interpretation of such statutes, thereby precluding their respective states from escheating these properties located within their boundaries. Respondent would once again call the Court's attention to the fact that it has already defined a chose in action, such as a claim for unpaid dividends, as a specie of intangible, personal property to be considered as an asset of the creditor having its situs in the state of residence of the creditor as reflected by debtor's books and records. (*Texas vs. New Jer-*

sey et al, Footnote 4, page 675, 379 U.S.). This being the case, the inescapable conclusion follows that the situs of each of these items of intangible personal property is in the state of the creditor's last known address as reflected by Respondent's books and records; that each of these nine states has an applicable escheat law thereby becoming entitled to escheat such property; and Petitioner is neither entitled to escheat any of these items of personal property nor to escheat any of the general assets held by Respondent in Texas.

CONCLUSION

The decision of the Texas Court of Civil Appeals and the approval of that decision by the Texas Supreme Court are in complete accord with *Texas vs. New Jersey et al* and are in all things correct. Petitioner's Application for Writ of Certiorari should be denied.

Respectfully submitted,

H. K. HOWARD
PHILLIP MCCONNELL

Attorneys for Respondent
120 North Chaparral Street
Corpus Christi, Texas

CERTIFICATE OF SERVICE

I, H. K. Howard, one of the attorneys for the Respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ____day of _____, 1967, I served a copy of the foregoing Answer to Petitioner's Application for Writ of Certiorari on Petitioner, the State of Texas, by depositing a copy in the United States Mail as certified mail with postage prepaid and addressed to the Attorney of Record for Petitioner, as follows: Mr. W. O. Shultz II, Assistant Attorney General, Box R, Capitol Station, Austin, Texas 78711.